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June 30, 2006

ELECTRONICALLY FILED

Ms. Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 Twelfth Street, S.W.  
Washington, DC 20554

Re: MB Docket No. 03-15  
Request for Waiver of July 1, 2006 Deadline  
KVCR-DT, San Bernardino, CA, Facility ID 58795

Dear Secretary Dortch:

On behalf of San Bernardino Community College District (the "Community College"), licensee of noncommercial educational station KVCR-TV/DT, San Bernardino, California, Facility ID 58795, we hereby respectfully request a waiver of the July 1, 2006 interference protection deadline.<sup>1</sup> As demonstrated below, the Community College is filing the instant waiver request because KVCR-DT is operating pursuant to Special Temporary Authority ("STA"), because the Commission has not yet granted the long-pending application to slightly modify, and complete the final construction of, KCSM-DT's full-power digital facilities – the same facilities under which it is currently operating pursuant to the STA.

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<sup>1</sup> See *Second Periodic Review of the Commission's Rules and Policies Affecting the Conversion to Digital Television, Report and Order*, 19 FCC Rcd 18279, ¶ 78 (2004) (the "Second Periodic Review R&O") (requiring NCE and other DTV licensees to meet certain construction and operation levels by July 1, 2006, in order to preserve interference protection).

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KVCR-DT Is Fully Constructed and Ready to Be Licensed. The Commission granted the Community College a digital construction permit on Channel 26.<sup>2</sup> While constructing its KVCR's digital facilities, the Community College learned that its tower could not support the additional structure needed to increase the tower's height to attach KVCR-DT's antenna, as specified in the station's DTV construction permit. Thus, the Community College simultaneously filed an application to modify the construction permit<sup>3</sup> and a request for Special Temporary Authority,<sup>4</sup> both of which requested to construct identical facilities by, *inter alia*, reducing the effective antenna height by 70 feet and increasing the ERP by 35 kW, as compared to the granted construction permit,<sup>5</sup> and resulting in digital facilities that closely match the coverage contours of the facilities specified in the original DTV construction permit.<sup>6</sup>

The Commission granted the STA request in less than a month,<sup>7</sup> and the Community College quickly constructed KVCR-DT's facilities, as specified in the STA request, and has been operating the station pursuant to the STA ever since.<sup>8</sup> However, the Commission has not yet granted KVCR-DT's modification application, which seeks authority to permanently construct facilities that are identical to KVCR-DT's STA facilities, during the two years the modification application has been pending.

KVCR-DT's Waiver Request Should Be Granted. As stated in the Second Periodic Review R&O, July 1, 2006 is the deadline for noncommercial DTV licensees, such as KVCR-DT, and certain other DTV licensees to construct and operate their digital facilities in order to retain interference protection within their certified service areas.<sup>9</sup> Specifically,

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<sup>2</sup> See File No. BPEDT-20000424ABO. The Commission extended the permit twice. See File Nos. BEPEDT- 20030224ABA and BEPEDT- 20030908ACO.

<sup>3</sup> See File No. BMPEDT- 20040624ABZ.

<sup>4</sup> See File No. BDSTA- 20040624AEX.

<sup>5</sup> See note 2, *supra*.

<sup>6</sup> See Engineering Statement of Kessler & Gehman Associates, Inc., page 1, in both BMPEDT- 20040624ABZ and BDSTA- 20040624AEX.

<sup>7</sup> See BDSTA- 20040624AEX (granted July 12, 2004).

<sup>8</sup> The STA has been extended three times, and the Community College filed a fourth STA extension request on June 30, 2006. See File Nos. BEDSTA-20050106ACS; BEDSTA-20050811ADZ; BEDSTA- 20060308AME; and BEDSTA-20060630\_\_\_\_.

<sup>9</sup> See Second Period Review R&O, § 78; see, also, *DTV Channel Election Issues – Compliance with the July 1, 2006 Replication/Maximization Interference Protection Deadline*;

Those licensees that receive a tentative DTV channel designation in the channel election process on their current digital channel must construct full, authorized DTV facilities. Those licensees that receive a tentative DTV channel designation on a channel that is not their current DTV channel must serve at least 80 percent of the number of viewers served by the 1997 facility on which their replication coverage was based.<sup>10</sup>

“The term ‘full, authorized DTV facilities’ refers to the facilities certified by the licensee on FCC Form 381, Digital Channel Election Pre-Election Certification Form.”<sup>11</sup>

On September 7, 2004, the day the Second Period Review R&O was released, KVCR-TV’s DTV channel designation was Channel 26 – the same channel that is listed for KVCR-DT in the “DTV Tentative Channel Designations for the First Round of DTV Channel Elections”<sup>12</sup> and the same DTV channel on which its full-power digital facilities have been completely constructed, as explained above, and operating at full power for almost two years.<sup>13</sup> Thus, the Community College has to the greatest extent possible for it under the circumstances complied with the Commission’s stated mandate in its Second Periodic Review R&O, “to speed the transition [to digital television] and to ensure that the spectrum is used efficiently” and to

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*Stations Seeking Extension of the Deadline, Public Notice*, DA 06-1255, released June 14, 2006 (the “July 1 Deadline Public Notice”).

<sup>10</sup> Second Period Review R&O, ¶ 78.

<sup>11</sup> July 1 Deadline Public Notice, page 2 (citing Second Period Review R&O, ¶ 41, and FCC Form 381).

<sup>12</sup> *See Tentative Channel Designations for Stations Participating in the First Round of DTV Channel Elections and Second Round Election Filing Deadline, Public Notice*, DA 05-2649, released October 4, 2005, Attachment I, page 14.

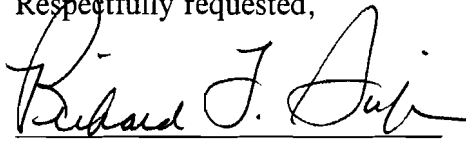
<sup>13</sup> Due to reasons beyond the Community College’s control, *i.e.*, the tower could not support the structure required under KVCR-DT’s original construction permit, BPEDT-20000424ABO, KVCR-DT’s fully constructed and operating facilities are not the same as the facilities the Community College listed for the station on the Pre-Election Certification Form 381: BPEDT-20000424ABO. *See* File No. BCERET-20041105AZC. However, the Commission has known for more than two years that it would be impossible for the Community College to construct KVCR-DT’s facilities as specified in BPEDT-20000424ABO, because the college stated that fact in both its modification application, BMPEDT- 20040624ABZ, and its STA request, BDSTA- 20040624AEX. It would be illogical to expect the Community College to have constructed the facilities that are listed in KVCR-DT’s Form 381, given the fact that, if constructed, the facilities would cause the station’s tower to collapse.

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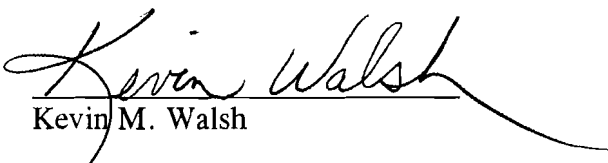
construct and operate fully licensed digital facilities by July 1, 2006.<sup>14</sup> As detailed above, KVCR-DT is fully constructed and has been operating as such pursuant to an STA for almost two years. The Community College needs to file the request for waiver of the July 1, 2006 deadline, only because the Commission has not granted its application to permanently modify its facilities, thereby allowing the Community College to file a license-to-cover application for KVCR-DT.

Under the circumstances, the San Bernardino Community College District respectfully requests a waiver of the July 1, 2006 “use it or lose it” deadline.

Respectfully requested,

  
Richard F. Swift

and

  
Kevin M. Walsh

Counsel to the San Bernardino  
Community College District

Attachment  
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<sup>14</sup> See Second Periodic Review R&O, ¶ 78.

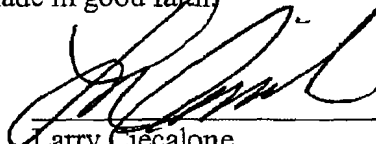
## **CERTIFICATION AND DECLARATION OF LARRY CIECALONE**

I, Larry Ciecalone, hereby declare and certify under the penalty of perjury, the following:

1. All parties to the instant request for waiver of the Commission's digital "use it or lose it" July 1, 2006 deadline are in compliance with Section 5301 of the Anti-Drug Abuse Act of 1988, 21 U.S.C. Section 862, the federal law which provides federal and state court judges the discretion to deny federal benefits to individuals convicted of offenses consisting of the distribution of controlled substances. For a definition of "party" for these purposes, see 47 C.F.R. Section 1.2002(b). See also Amendment of Part 1 of the Commission's Rules to Implement Section 5301 of the Anti-Drug Abuse Act of 1988, 6 FCC Rcd 7551, 57 Fed. Reg. 00186 (1991).

2. No party to the instant request for waiver is subject to a denial of federal benefits that includes FCC benefits pursuant to Section 5301 of the Anti-Drug Abuse Act of 1988, 21 U.S.C. 862. For the definition of a party for these purposes, see 47 C.F.R. Section 1.2002(b).

3. The statements made in the instant request for waiver are true, complete, and correct to the best of my knowledge and belief, and are made in good faith.

  
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Larry Ciecalone  
General Manager, KVCR-TV

June 30, 2006